IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2052 OF 1997

1. Mar Gregorious Orthodox Syrian Church, a Society duly registered under the Societies Registration Act, 1860 and Public Trust Act, 1950 having its registered address as Plot No.10, Gregorious Nagar, V.N.Purav Marg, Chembur, Mumbai - 400 071.

2. Rev. Fr.Thomas Kurien, Vicar and Chairman of Petitioner No.1, having the same address as Petitioner No.1.

3. A.K.Kurivilla, Treasurer of the Petitioner and having the same address as Petitioner No.1. .. Petitioners

Versus

1. State of Maharashtra, through the Secretary, Urban Development Department, Mantralaya, Bombay 400 032.

2. Municipal Corporation for Greater Bombay, a Corporation constituted under Bombay Municipal Corporation Act, inter alia, having his at Mahapalika Marg, Bombay 400 001.

3. Municipal Commissioner, Municipal Corporation for Greater Bombay, Mahapalika Marg,

Bombay 400 001.)

4. Senior Ward Officer,)
Bombay Municipal Corporation,)
'M' Ward Officer, Chembur,)
Mumbai.)

5. Additional Registrar of)
Co-operative Societies,)
Malhotra House, 6th Floor,)
Opp.G.P.O., Bombay 400 001.)

6. Sub-Registrar, Co-operative)
Societies, 'M' Ward,)
Chembur, Bombay.)

7. Commissioner of Police,)
having his office at)
Opp.Mahatma Phule Market,)
Bombay 400 001.)

8. Senior Police Inspector,)
Chembur Police Station,)
Bombay)

9. Bazaar Gate Co-operative)
Housing Society Ltd.,)
a Society duly registered)
under the Maharashtra)
Co-operative Societies Act,)
but since defunct society,)
through the Registrar,)
Co-op.Societies, M-Ward,)
Bombay.)

10. C.V.Thampi, having his address)
at 16, Dreamland,)
A-Soares Road, Chembur,)
Mumbai - 400 071.).. Respondents

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Shri N.K.Mudnany for the petitioners.

Ms M.M.Jadhav, AGP for respondent No.1 and 5 to 8.

Mrs. V.K.Khatu with Shri Vinod Mahadik for respondent Nos.2, 3 and 4.

S/Shri Milind Vasudeo with Kishor Tembe for respondent No.10.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 19TH OCTOBER, 2005.

ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. The petitioners seek direction to the respondents for performance of their obligations under the various Statutes in relation to the Development Regulations, Law and Order Maintenance, as also regarding the administration of Co-operative Societies in relation to the properties which are subject matter of controversy between the parties.

2. The petitioner No.1 is a public trust and society whereas the petitioner No.2 is the Chairman thereof. The property in question is Plot No.10, Survey Nos.382, 335, 129 and 128 bearing C.T.S.No.1746/18 and the portion of Plots bearing Nos.9A and 11A shown as recreation ground in the development plan. The contention of the petitioners is that the Plot No.10 was agreed to be purchased by the petitioners for construction of a church to perform religious activities therein and accordingly

the possession of the said plot was taken over and the church was constructed in the said plot. The petitioner No.1 is a society affiliated to Malankara Orthodox Syrian Church and the Spiritual Head of the said Syrian Church is the head of all the Orthodox Syrian Churches in Mumbai. At the time of purchase of plot No.10, the petitioners had taken into consideration the fact of reservation of two side plots, as the recreation ground. However, taking undue advantage, the respondent No.10 started unauthorise use of the said recreation ground and have also carried out some construction therein. It is their further case that the respondent No.10 conducts various programmes in the said recreation ground and it causes nuisance to the people attending the church. The petitioners therefore filed complaint to various authorities including the Corporation, Police and office of the Co-operative department, without any fruitful result in the matter, and therefore, the petitioners are compelled to file the present petition.

3. On the other hand, it is the case of the respondent No.10 that the recreation ground bearing C.T.S.Nos.1746/17 and 1746/20 is in exclusive possession of the said respondent, and by way of

adverse possession, he had acquired title to the said plot since the year 1973. It is his further case that the structures which are there in the recreation ground are duly assessed for municipal taxes since 1984 and even the said area is being used on various occasion by the petitioners with the permission of the respondent No.10 and that has been duly acknowledged by the petitioners in the annual report regarding functioning of the respondent No.1- trust.

4. The Corporation has not filed any affidavit-in-reply. However, the learned advocate for the Corporation has submitted that the application filed on behalf of the petitioners in the year 1987 for approval of certain constructions was not considered on account of some unauthorised structures which were found existing in the recreation ground. However, the records of the Corporation do not disclose any action having been taken in relation thereto after refusal of such approval for construction in the year 1987. She has further submitted that the officers of the Corporation have inspected the site yesterday and have carried out the panchanama and will take appropriate action in case any illegal construction is found to have been carried out in the area, and such action will be taken within

a period of two months.

5. The learned advocate appearing for the Government has stated that the complaints to the police by the petitioners were only relating to the alleged illegal constructions and not relating to the noise, though it was argued so on behalf of the petitioners. As regards the registration of the society to whom the land originally belonged to, it has been informed by the learned advocate for the Government that though such registration is found to have been made, at present the society does not appear to be in existence.

6. It is also sought to be argued on behalf of the respondent No.10 that the petitioners have not disclosed any right in or to the recreation ground, nor have acquired the same in terms of the provisions of law and particularly in terms of clause 23(1)(e)(g)(ii)(e) of the Development Control Regulations for Greater Bombay 1991 and the petitioners have not produced on record pertaining to the sale deed from the erstwhile owners in relation to the recreation ground in favour of the petitioners, in the absence whereof they are not entitled to claim right to the recreation ground.

7. Upon hearing the learned advocates and on perusal of the records, undoubtedly, it is revealed that the petitioners are in occupation of the Plot No.10, consequent to the agreement dated 14th February, 1972 and they are having religious institution in the said plot. It is also undisputed fact that the various activities are being carried out by the respondent No.10 in the Plot No.9A, and such activities are being carried out at least since 1984 onwards. It is also not in dispute that the petitioners have not been able to place on record any sale deed disclosing any ownership right having been conveyed in their favour in relation to the recreation ground by the erstwhile owner of the said plot. At the same time, it is also not disputed by the parties that there are some structures in the recreation ground. Such structures are also being subjected to payment of tax to the Corporation.

8. It is a matter of record that in the year 1997, there was a complaint lodged with the Corporation by the petitioners alleging some illegal constructions having been carried out in the recreation ground by the respondent No.10. The Corporation records, as has been informed to us by the

learned advocate for the Corporation, do not disclose any action having been taken on such complaint. Indeed, it is surprising that inspite of the Sections 350 and 351 of the Mumbai Municipal Corporation Act, 1888, inspite of there being a specific complaint lodged by the petitioners, the respondents did not take any action on such complaint till this date. It is further surprising that inspite of the fact that the writ petition was filed in the year 1997 itself disclosing the fact of lodging of such complaint with the Corporation and the Corporation having been served, the Corporation has not taken any action on such complaint nor has also bothered to file any affidavit-in-reply or to tender any explanation for failure on the part of the Corporation to take necessary action on the complaint filed by the petitioners. It is pertinent to note that it is not the case of the Corporation that the complaint filed by the petitioners was totally frivolous and bogus but the contention is that the records nowhere disclose of any action having been taken on the complaint filed by the petitioners. Sections 350 and 351 of the Municipal Corporation Act clearly provide for obligation of the Corporation to ensure that no illegal construction is carried out within the limits of jurisdiction of the Corporation and whenever any

illegal construction is either brought to the notice of the Corporation or any complaint regarding any illegal construction activities is lodged with the Corporation, certainly it would be duty of the Corporation to take note of the said complaint and to take necessary steps in the matter in accordance with the provisions of law. The lethargy in this regard on the part of the Corporation is certainly not appreciable. It obviously discloses complete failure on the part of the Corporation to perform its statutory obligation.

9. Undoubtedly, the clause 23(1)(e) of the Development Regulations discloses that the ownership of such recreational area in the approved layout plan shall be in the ownership of the owners of the property or properties for whose benefits the recreational area is approved under the layout. It also discloses that such ownership should be confirmed by deed of sale under which the ownership of the plots for whose benefits recreational area is conveyed or purchased. In that sense, maintenance of recreational space could be the responsibility of all the owners of all the properties for whose benefits such recreational area is approved in the layout plan. Nevertheless, if any illegal construction or any

activity disclosing illegal construction is being carried out in such recreational area, it would be the responsibility of the Corporation to take appropriate steps to stop such activities and to undo illegality, if any, carried out in such recreational area. Once a complaint is filed in that regard, as the case in hand, certainly there cannot be an excuse for the Corporation not to consider such complaint. It has to be decided in accordance with the provisions of law. Undoubtedly, a person who might have carried out construction has to be given an opportunity to putforth his say and the authorities will have to take appropriate decision and action in that regard in accordance with the provisions of law. But inaction on the part of the Corporation is certainly condemnable.

10. Though the petitioners seek to raise various other issues, they are in the realm of ownership rights of the plot holders and involve disputed questions of fact, and therefore, it would not be open for the petitioners to seek adjudication of those issues in writ jurisdiction. The remedy in that regard lies elsewhere. We therefore refrain ourselves from expressing any opinion on merits of those issues sought to be raised by either of the parties.

11. As regards the grievance about failure on the part of the police authorities to take action against noise pollution, as rightly submitted by the learned AGP for the Government, we do not find any such complaint having been filed with the police by the petitioners. As regards the alleged illegal construction, certainly it would not be for the police to take any action in that regard unless the Corporation seeks assistance of the police or the private party obtains order in that regard from the Court. The police, of their own, cannot entertain any such complaint which does not disclose any cognizable offence within their jurisdiction nor they are entitled to deal with such complaint.

12. As regards the grievance of the petitioners about failure on the part of the authorities of the Co-operation Department, apart from mere allegation in that regard, we do not find any specific grievance having been made by the petitioners with the Co-operation Department and failure of such department to attend to such grievance. In case there are any financial irregularities by the cooperative societies, certainly those irregularities are required to be brought to the notice of the concerned authorities

whereupon the authorities can take necessary action under the provisions of the Cooperative Societies Act and the rules made thereunder. That is not the case in the matter in hand. The grievance is regarding failure of the society to check the alleged activities of the respondent No.10 in the recreation ground. It is the contention on behalf of the petitioners that it was the obligation of the society, which was owner of the land from whom the land in occupation of the petitioners has been purchased by the petitioners, to take necessary action against the respondent No.10 to restrain him from using recreation ground for his exclusive use. As already observed above, this has been denied by the respondent No.10 and therefore it involves disputed question of fact, the adjudication of which is not possible in the writ jurisdiction. Needless to say that in case the petitioners bring to the notice of the co-operation department any matter in relation to the said society which falls within the domain of the powers of those authorities to look into, certainly the authorities will be bound to consider the same in accordance with the provisions of law. However, in the absence of any such concrete complaint having been disclosed in the petition, the authorities cannot be blamed for ignoring irrelevant applications filed by the petitioners.

13. In the result, therefore, except directing the Corporation to consider the grievance made by the petitioners under complaint which is filed in the year 1997 and further to comply with their obligation under Sections 350 and 351 of the Mumbai Municipal Corporation Act in respect of the alleged illegal constructions in accordance with the provisions of law, no other direction can be issued in the present petition. All other issues are kept open for being dealt with before an appropriate forum in an appropriate proceedings if the parties so desire.

14. In the result, therefore, the petition partly succeeds. The Corporation to take appropriate steps as informed to us in relation to the alleged illegal construction in accordance with the provisions of law as expeditiously as possible and after following the procedure laid down under the Mumbai Corporation Act and the rules framed thereunder. Needless to say that the Corporation is expected to take necessary steps and conclude its action, if any, within a period of four months from today. Meanwhile, all the parties to the petition shall not cause any change in the plots in question and shall maintain status quo as regards the structures in the said plots, albeit, subject to

the order to be passed by the Corporation. The rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)